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REMARKS

Claims 1-24 remain pending.

In the Office Action, the Examiner required restriction among the following groups of claims:

- I. Claims 1-6.
- II. Claims 7-13 and 21-24.
- III. Claims 14-20.

Applicant provisionally elects Group II, claims 7-13 and 21-24, with traverse.

The Examiner is respectfully reminded of the two requirements in M.P.E.P. § 803 for a proper restriction: "(A) The inventions must be independent . . . or distinct as claimed . . . ; and (B) There would be a serious burden on the examiner if restriction is not required."

No serious burden:

Addressing the second requirement, the facts and circumstances all indicate that there is no "serious burden" in examining all of claims 1-24, even if the inventions were independent or distinct as claimed. On page 2 of the Office Action, only Group I is correctly classified in class 165 ("Heat Exchange" from the Manual of Classification) and/or class 454 ("Ventilation" from the Manual of Classification)¹. The remaining Groups II and III are incorrectly classified outside of class 165 and/or class 454, where they properly belong with the claims of Group I.

Group II is misclassified into class 361, subclasses 694 and 695. From the Manual of Classification, these subclasses are indented under subclass 679 ("For electronic systems and devices: . . . Subject matter comprising *housings or mounting assemblies* specifically for electronic systems and devices not provided for elsewhere.") (emphasis added), which in turn is indented under subclass 600 ("HOUSING OR MOUNTING ASSEMBLIES WITH DIVERSE ELECTRICAL COMPONENTS: . . . Subject matter comprising (a) *housings, boxes, panels, or*

¹ Class 257, "Active Solid-State Devices (e.g., Transistors, Solid-State Diodes)," does not appear to be a correct classification for Group I.

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mounting arrangements with an electrical device, multiple electrical devices, or diverse electrical components or (b) *housing or mounting arrangements* with keyboards, CRTs, disk drive units, displays, or computer related equipment which inherently have diverse electrical components.”) (emphasis added). None of claims 7-13 and 21-24 in Group II recites a housing or mounting assembly. Hence, Group II is not properly classified in class 361, subclasses 694 and 695.

Similarly, Group III is misclassified into class 713, subclasses 300+. From the Manual of Classification, subclass 300 relates to “COMPUTER POWER CONTROL: . . . Subject matter including details of steps or means for *modifying an amount of power used* by a digital data processing system or a system response to available power. (1) This subclass includes power reduction, powering-up systems, powering-down systems, etc.” (emphasis added). None of claims 14-20 in Group III recites modifying an amount of power used, powering-up, or powering-down. Thus, Group III is not properly classified in class 713, subclasses 300+.

As explained above, Groups I-III are properly classified in a common area (i.e., class 165 and/or class 454). Because “the classification is the same and the field of search is the same and there is no clear indication of separate future classification and field of search” (M.P.E.P. § 808.02), restriction is not proper among Groups I-III. The requirement should be withdrawn for at least this reason.

Groups not patentably distinct:

It readily apparent that paragraphs 0009 to 0038 and Figs. 1A-4 of the published application describe the same essential characteristics of a single embodiment of the invention. That Applicant has chosen to claim this one embodiment in different ways does not create independent or distinct inventions. See M.P.E.P. § 806.03 (“Where the claims of an application define the same essential characteristics of a single disclosed embodiment of an invention, restriction therebetween should never be required. This is because the claims are but different definitions of the same disclosed subject matter . . .”). Hence the claims cannot be patentably distinct, because they define the same essential characteristics of the single disclosed embodiment. The requirement should be withdrawn for this additional reason.

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Although M.P.E.P. § 806.03 forecloses restriction as explained above, in an effort to be fully responsive Applicant will address the allegations on pages 2 and 3 of the Office Action.

On page 2, the Office Action alleges that Group II is a combination and that Group I is a subcombination. This portion of the Office Action also alleges that the “combination as claimed does not require the particulars of the subcombination as claimed at least in part because Group II does not provide a control signal and an actuator.”

To the contrary, claim 7 in Group II, which is alleged to be the combination, requires “a first airflow gate able to reduce airflow to the first power supply when a failure of the first power supply is detected.” This at least implicitly requires both the actuator and control signal pointed to on page 2 of the Office Action. Claim 7 implicitly requires the actuator so that the claimed first airflow gate is “able to reduce airflow;” if there were no actuator, the first airflow gate would not be “able” as claimed. Similarly, some sort of control or triggering signal must implicitly be present to meet the “when a failure of the first power supply is detected” limitation of claim 7. That these actuator and control signal elements of Group I are not explicitly recited in claim 7 of Group II makes them no less “required” (under M.P.E.P. § 806.05(c)) by the claim language of Group II. Thus, the two-way test for combination-subcombination distinctness fails for Groups I and II. The requirement should be withdrawn for this additional reason.

On page 3, the Office Action alleges that Group III is a process of use, and that Group II is a product for its practice. This portion of the Office Action also alleges that the method of Group III can be used to control “*other types* of products; for example products with *other types* of *restrictors* that are *not air flow gates*” (emphasis added).

This assertion is spurious, because it provides no evidence. It merely takes the claim language of Group III (e.g., “restrictor,” corresponding to “restricting airflow” in claim 14) and alleges that it can be performed by some “other types” of devices that are the logical opposite of the claim language of Group II (i.e., “not” the “airflow gate” of claim 7). Such a bare conclusion based solely on a logical negation of the claim language of Group II does not provide the evidence required by M.P.E.P. § 806.05(e) (“The burden is on the examiner to provide

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reasonable examples that recite material differences.”). The above “other types of restrictors that are not air flow gates” is demonstrably not a “reasonable example.”

Nor is Applicant convinced that a “material difference” even exists between something “restricting airflow” as recited in Group III and an “airflow gate” as recited in Group II. The Examiner is respectfully referred to paragraph 0019 of Applicant’s specification, which provides:

[0019] It should be noted that the structure and operation of airflow gate 130 may differ from that shown in Figs. 1A-1D. For example, airflow gate 130 may include an iris-type opening that is able to be opened and closed by actuator 120. Other possible implementations may include a “window shade” or door-type structure that pivots to open and close an airflow path. Further, in some implementations, airflow gate 130 may reduce, but not completely prevent, airflow to an adjacent component. *The claimed invention is generally not limited with regard to a specific implementation or implementations of airflow gate 130.*

(emphasis added). Thus, the proof required by M.P.E.P. § 806.05(e) is not present in the Office Action, and likely cannot be provided. The requirement should be withdrawn for this additional reason.

Because Groups I-III have not acquired a separate status in the art, and because these groups are not patentably distinct, all pending claims in Groups I-III (i.e., claims 1-24) should be examined together.

Reconsideration and examination of all pending claims 1-24 are respectfully requested.

In the event that any outstanding matters remain in this application, Applicant requests that the Examiner contact Alan Pedersen-Giles, attorney for Applicant, at the number below to discuss such matters. .

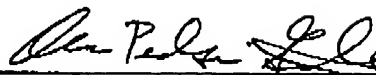
To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-0221 and please credit any excess

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fees to such deposit account.

Respectfully submitted,

Dated: November 16, 2005



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